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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,214	11/24/2008	Cliff Aaby	FSP0347	6572
88095 ARRIS 3871 Lakefield Drive Suwanee, GA 30024	7590 10/06/2009		EXAMINER KAY, MARY ANNE	
			ART UNIT 2426	PAPER NUMBER
			NOTIFICATION DATE 10/06/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mirho@fspllc.com

### Office Action Summary

**Application No.**

10/579,214

**Applicant(s)**

AABY ET AL.

**Examiner**

MARY ANNE KAY

**Art Unit**

2426

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date 5/12/06

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 1-16 are pending in this application.

#### **"Medium" Interpretation**

2. From the specification at ¶ 0020, the Examiner has determined that the Applicant in accordance with statutory requirements, limits "medium" to be of a hardware character.

#### ***Claim Rejections - 35 USC § 102***

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hendricks et al. (U.S. Patent 5,600,364, referred to as **Hendricks**).

#### **Claim 1**

**Hendricks** anticipates:

logic to compose information about multiple audio and/or video streams into an audio and/or video stream format (**Hendricks** Fig. 14, el. 396; Abstract, C15:22-40; Examiner's Note (EN): There are hundreds of channels of programming are managed in the system); and

logic to communicate the information about multiple audio and/or video streams  
to a plurality of set top boxes (**Hendricks** Fig. 4-7; Abstract, C15:22-40;  
EN: Multiple set top boxes are managed in the system).

**Claim 2**

**Hendricks** anticipates:

information about content categories (**Hendricks** C8:54-C9:8).

**Claim 3**

**Hendricks** anticipates:

information about audio and/or video titles (**Hendricks** Fig. 8b, el. 1052; C24:3-10).

**Claim 4**

**Hendricks** anticipates:

logic to compose an index of audio and/or video information into the audio and/or  
video stream format (**Hendricks** C8:54-C9:8, C12:7-50).

**Claim 10**

**Hendricks** anticipates:

logic to tune to a channel comprising an index of audio and/or video information  
having a format of audio and/or video streams (**Hendricks** C16:10-24),  
to read the index (**Hendricks** C16:10-24), and  
to apply the index to identify one or more channels comprising information  
describing audio and/or video content (**Hendricks** C12:7-50).

**Claim 11**

**Hendricks** anticipates:

logic to read information from the channel comprising an index of audio and/or video information (**Hendricks C12:7-50**) and, when the channel contains an indication of invalid information, to tune to an alternate channel comprising the index in the format of audio and/or video streams (**Hendricks C12:7-50**; EN: Examiner interprets demographic information targeting switching as "invalid information" causing a channel change to an alternate channel), and to read the index from the alternate channel (**Hendricks C12:7-50**; EN: Examiner interprets demographic information targeting switching as "invalid information" causing a channel change to an alternate channel).

**Claim 12**

**Hendricks** anticipates:

logic to tune to a channel comprising information about at least one audio and/or video stream (**Hendricks C16:10-24**), the information about at least one audio and/or video stream formatted as an audio and/or video stream (**Hendricks Fig. 14**, el. 396; Abstract), read the information about the at least one audio and/or video stream (**Hendricks C16:10-24**), and display the information about the at least one audio and/or video stream (**Hendricks C16:10-24**).

**Claim 13**

**Hendricks** anticipates:

logic to read information from the channel and, when the channel contains an indication of invalid information (**Hendricks** C12:7-50),  
to tune to an alternate channel comprising the index in the format of audio and/or video streams (**Hendricks** C12:7-50; EN: Examiner interprets demographic information targeting switching as "invalid information" causing a channel change to an alternate channel), and  
to read the index from the alternate channel (**Hendricks** C12:7-50; EN: Examiner interprets demographic information targeting switching as "invalid information" causing a channel change to an alternate channel).

**Claim 14**

**Hendricks** anticipates:

logic to read the information about the at least one audio and/or video stream from the channel (**Hendricks** C12:7-50) and,  
when the channel contains an indication of invalid information, to tune to an alternate channel comprising the information about the at least one audio and/or video stream (**Hendricks** C12:7-50; EN: Examiner interprets demographic information targeting switching as "invalid information" causing a channel change to an alternate channel), and  
to read the information about the at least one audio and/or video stream from the alternate channel (**Hendricks** C12:7-50; EN: Examiner interprets

demographic information targeting switching as "invalid information" causing a channel change to an alternate channel).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hendricks** in view of Aggarwal et al. (U.S. Patent 6,631,413, referred to as **Aggarwal**).

**Claim 5**

**Hendricks** fails to teach:

logic to alternatively deliver the information about multiple audio and/or video streams on a first tunable channel and on a second tunable channel

**Aggarwal** teaches:

logic to alternatively deliver the information about multiple audio and/or video streams on a first tunable channel and on a second tunable channel

(**Aggarwal** C3:66-C4:10; EN: Examiner interprets the transmitting digital objects over TV channels as analogous to delivering programming schedule information to a set top box. ¶ 11. applies).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Hendricks** with the transmission of information over tunable channels as taught by **Aggarwal** providing utilizing spare bandwidth in a broadcast environment such as cable TV, satellite TV, or TV via the airwaves as a means of delivery.

**Claim 6**

**Hendricks** teaches:

information about content categories (**Hendricks** C8:54-C9:8; EN: Although the delivery logistics are different from direct set top delivery of menu information, the information will remain the same regarding the programming).

**Claim 7**

**Hendricks** teaches:

information about audio and/or video titles (**Hendricks** Fig. 8b, el. 1052; C24:3-10; EN: Although the delivery logistics are different from direct set top delivery of menu information, the information will remain the same regarding the programming).

**Claim 8**

**Hendricks** teaches:

the index of audio and/or video information (**Hendricks** C8:54-C9:8).

**Hendricks** fails to teach:



logic to alternatively deliver the index of audio and/or video information on a first tunable channel and on a second tunable channel.

**Aggarwal** teaches:

logic to alternatively deliver the index of audio and/or video information on a first tunable channel and on a second tunable channel (**Aggarwal** C3:66-C4:10; EN: Examiner interprets transmitting digital objects over TV channels as analogous to delivering programming schedule information to a set top box. Set top terminal applies template to information. ¶ 11. applies).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Hendricks** with the transmission of information over tunable channels as taught by **Aggarwal** providing utilizing spare bandwidth in a broadcast environment such as cable TV, satellite TV, or TV via the airwaves as a means of delivery.

***Claim Rejections - 35 USC § 103***

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Hendricks** in view of Ellis et al. (U.S. Patent 2004/0117831 A1, referred to as **Ellis**).

**Claim 9**

**Hendricks** fails to teach:

logic to receive from a set top box a request for an audio and/or video stream,  
the request comprising an identifier of a title of the audio and/or video  
stream.

**Ellis** teaches:

logic to receive from a set top box a request for an audio and/or video stream,  
the request comprising an identifier of a title of the audio and/or video  
stream (**Ellis** ¶ 0101, 200 EN: Program guide includes an identifier of the  
title associated with the program along with other information associated  
with that program).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the  
invention was made to modify the teachings of **Hendricks** with the request for  
the stream and the identifier by title as taught by **Ellis** providing information from  
the menu being sent to the headend or server for the program request.

***Claim Rejections - 35 USC § 103***

7. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over  
**Hendricks** in view of Akiyama et al. (U.S. Patent 5,784,464, referred to as **Akiyama**).

**Claim 15**

**Hendricks** teaches:

logic to locate in the content index a channel comprising audio and/or video title  
information (**Hendricks** C18:60-C19:7), and

to tune to the channel comprising the audio and/or video title information

(**Hendricks** C18:60-C19:7), and

to locate the audio and/or video title information in the channel comprising the  
audio and/or video title information (**Hendricks** C18:60-C19:7),

**Hendricks** fails to teach:

to apply the audio and/or video title information and a service group identifier in a  
request communicated to an on-demand server system

**Akiyama** teaches:

to apply the audio and/or video title information and a service group identifier in a  
request communicated to an on-demand server system (**Akiyama**  
C11:12-26; EN: Examiner interprets user connection to the arbitrary  
service client and making the request the same as the request originating  
from the set top box to the on-demand server. ¶ 11. applies).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the  
invention was made to modify the teachings of **Hendricks** with the identification  
information in the file request as taught by **Akiyama** providing an provider  
identification for any charges to be forwarded to and for network authentication  
use.

#### **Claim 16**

**Hendricks** teaches:

logic to locate in the content index an alternate channel comprising audio and/or video title information (**Hendricks** C12:7-50), and to tune to the alternate channel comprising the audio and/or video title information when the channel comprising the audio and/or video title information comprises an indication of invalid data (**Hendricks** C12:7-50; EN: Examiner interprets demographic information targeting switching as "invalid information" causing a channel change to an alternate channel. Examiner interprets searching to include title search. ¶ 11. applies).

### ***Examination Considerations***

8. The claims and only the claims form the metes and bounds of the invention. "Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969) (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

9. Examiner's Notes are provided with the cited references to prior art to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

10. Unless otherwise annotated, Examiner's statements are to be interpreted in reference to that of one of ordinary skill in the art. Statements made in reference to the condition of the disclosure constitute, on the face of it, the basis and such would be obvious to one of ordinary skill in the art, establishing thereby an inherent prima facie statement.

11. Examiner's Opinion: ¶¶ 8.-10. apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

### ***Conclusion***

12. The prior art of record and not relied upon is considered pertinent to Applicant's disclosure.

- Rainisto, European Patent Application 1355448 A2 I

- Lupoli et al., U.S. PGPub 2005/0092823 A1 I

- Lambert, U.S. Patent 4,381,522 A I
- Hamilton et al., U.S. Patent 5,579,055 A I
- Brulette et al., U.S. Patent 5,694,176 A I
- Ten Kate et al., U.S. Patent 6,601,237
- Moeller et al., U.S. Patent 5,828,370

13. Claims 1-16 are rejected.

### ***Correspondence Information***

14. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to MARY ANNE KAY whose telephone number is (571)270-5677. The Examiner can normally be reached on Monday - Friday, 8:00 AM - 5:00 PM, EST.

As detailed in MPEP 502.03, communications via Internet e-mail are at the discretion of the Applicant. Without a written authorization by Applicant recorded in the Applicant's file, the USPTO will not respond via e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A paper copy of such correspondence will be placed in the appropriate patent application. The following is an example authorization which may be used by the Applicant:

Notwithstanding the lack of security with Internet Communications, I hereby authorize the USPTO to communicate with me concerning any subject matter related to the instant application by e-mail. I understand that a copy of such communications related to formal submissions will be made of record in the applications file.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Joseph Hirl can be reached on (571)272-3685. Any response to this office action should be mailed to:

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or faxed to:

(571)273-8300 (for formal communications intended for entry).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Examiner

/Joseph P. Hirl/  
Supervisory Patent Examiner, Art Unit 2426  
September 30, 2009